

THROUGH HIS IMPUGNED ORDER DATED 15.08.2022 BY IGNORING HIS EARLIER ORDERS IN FAVOUR OF THE APPELLANT.

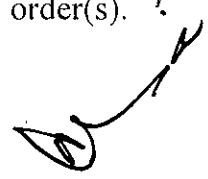
JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Senior Vernacular Teacher on 13.11.1994, who served his department for about twenty years and was promoted as SST (M&P) on 01.11.2014; that the appellant had submitted an application for medical leave due to his illness but the same was not honored; that, respondent No. 7 submitted a report of absence from duty of the appellant, conducted enquiry against the appellant and submitted a report; that respondent No. 5 passed an impugned order dated 29.07.2020, whereby, the appellant was instead compulsorily retired from service from the date of his absence; that the appellant being aggrieved, preferred an appeal before respondent No.4, which was rejected vide order dated 15.08.2020, hence, the instant service appeal on 05.09.2022.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
M.AKBAR KHAN ...MEMBER (Executive)

Service Appeal No.1293/2022

Date of presentation of appeal.....05.09.2022
Dates of Hearing.....05.09.2023
Date of Decision.....05.09.2023

Sar Zamin Khan S/O Muhammad Zamin (Late) R/O Village & Post Office Kityari, Tehsil Adenzai, District Dir Lower, Allegedly compulsorily retired as S.S.T (M&P) (BPS-16) from Govt: High School Siawarghar.....*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through its Chief Secretary.
 2. **Secretary** Finance Department, Govt: of Khyber Pakhtunkhwa.
 3. **Secretary** Establishment Department, Govt: of Khyber Pakhtunkhwa.
 4. **Secretary** Elementary & Secondary Education (E&SE) Department Govt: of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
 5. **Director**, Elementary & Secondary Education (E&SE) Department Khyber Pakhtunkhwa, G.T Road, Hashtnagri, Peshawar.
 6. **District Education Officer** (Male), District Dir Lower at Timergara.
 7. **Head Master**, Govt: High School Sia Warghar, Tehsil Adenzai, District Dir (Lower).
-(*Respondents*)

Present:

Malik Muhammad Ajmal Khan, Advocate.....For appellant.

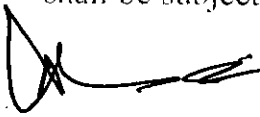
Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH ALL AMENDMENTS UPTO DATED AND THOSE OTHER ENABLING AND APPLICABLE PROVISIONS OF LAW GOVERNING THE SUBJECT MATTER AGAINST AN IMPUGNED ORDER BEARING ENDST NO. 3570-72/F.NO.44/VOL-1/SST(M)COMP/DIL LOWER, DATED 29.07.2020 RENDERED BY RESPONDENTS NO.5 I.E. DIRECTOR (E&SE) AND ILLEGALLY CONCURRED BY RESPONDENT NO.4 I.E. WORTHY SECRETARY (E&SE)



5: The record reflects that after passage of the order dated 29.07.2020, whereby the appellant was compulsorily retired from service, the appellate authority, vide letter dated 21.04.2021, directed that the case of the appellant be sent to the Director General Health Services, Peshawar for examination of the appellant by the Standing Medical Board. Passage of this order/direction has impolitely set aside the impugned order of compulsory retirement and in compliance with the said direction the appellant was examined by a Standing Medial Board of five Doctors at the Police/services hospital, Peshawar. The report of the board shows that the appellant was permanently incapacitated for government job in future. Ignoring the report of the Medical Board, a second/appellate order was passed on 15.08.2022 (also impugned herein), whereby the departmental appeal of the appellant was regretted and punishment of compulsory retirement was maintained. The appellate order does not contain any details regarding sending of the case of the appellant to the Standing Medial Board on the earlier order of the appellate authority, medical examination of the appellant by the Standing Medical Board and report of the Medical Board declaring the appellant as permanently incapacitated for government job, therefore, the impugned appellate order dated 15.08.2022 is also not sustainable.

6. As a resultant consequence, we allow this appeal, set aside the appellate order and direct the appellate authority to decide the matter of the appellant in the light of the decision of the Medical board in accordance with law within a period of sixty days after receipt of copy of this judgment/order. The issue of back benefits shall be subject to the outcome of the above proceedings. Date of receipt of copy of



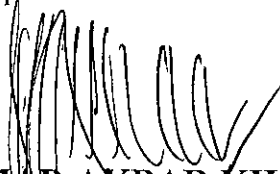
the judgment shall be acknowledged in writing to the Registrar of this Tribunal.

Costs shall follow the events. Consign.

7. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 5th day of September, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court Swat



MUHAMMAD AKBAR KHAN
Member (Executive)
Camp Court Swat

Adnan Shah, PA